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**Call for input “Promotion and protection of human rights in the context of mitigation, adaptation, and financial actions to address climate change, with particular emphasis on loss and damage”**

*Question 1: What experiences and examples are you aware of that are being faced by particularly individuals and communities in vulnerable situations (as identified above) that have suffered loss and damage due to the adverse impacts of climate change?*

As the planet continues to warm, climate change impacts are unfolding more frequently, through

both sudden-onset hazards, such as floods or storms, and slow-onset hazards, including sea-level

rise and long-term drying of agricultural land. These risks make certain environments less

hospitable, propelling populations to migrate to new locations more suitable for life. One of the

most personally disruptive impacts of climate change can be seen in this forced migration of

individuals from their homes. Some studies on low-income countries have shown that rising temperatures decrease migration, as they lower agricultural productivity levels which then decreases cash flow (Mbiyozo, 2020). This resource change reduces the ability of an individual or community to respond to less hospitable climates and relocate (Mbiyozo, 2020). When those who are socioeconomically marginalized are able to migrate it tends to be low-agency migration, which frequently amplifies precarious conditions and exposure to hazards (IPCC, 2022:7-15). Rural-to-urban migrants typically relocate due to declining agricultural productivity and often have no choice but to resettle in informal settlements. These haphazardly-constructed communities are often on low-lying ground, making individuals vulnerable to sea-level rise, river floodings, or landslides (IPCC, 2022:9-98). Given these known risks of relocating and a low guarantee that life will be better after the move, migration is usually seen by residents as a last resort, with immobility until life is immediately threatened. Recognizing this threat to livelihoods, governments and organizations have set up legal frameworks and international policy mechanisms to help adapt to climate change and assist those affected. Certain accommodations are still lacking, however, as seen in the exclusion of climate migrants from protection under international refugee law, and policies and discourse surrounding climate-related displacement have yet to consider every dimension of its causes and impacts. These gaps can aggravate issues of injustice, resulting in imbalances in the realized impacts of climate change on different communities and diverted responsibilities of institutions to respond.

*Question 2: What legislation, policies and practices do you think are necessary to provide redress for particularly individuals and communities in vulnerable situations that have suffered and will continue to suffer loss and damage due to the adverse impacts of climate change?*

In the international policy sphere, migration tends to be a contentious topic, often associated with speeches about walls being built and images of migrant-filled boats sinking off of coastlines. The burgeoning interest in managed retreat programs has been accompanied by discussions that work to de-securitize climate migration (Bettini et al., 2016). Despite this push towards de-stigmatization, obstacles remain in the existence of a “climate gap”, as climate change continues to receive more attention on the international stage than in local or everyday life, resulting in narratives that emphasize expert opinion on risks and vulnerabilities over community thoughts and values (Gaillard, 2012). This imbalance threatens to further marginalize vulnerable communities. Community involvement and cultural considerations must be a key priority when structuring migration as a method of adaptation, as well as legal protections for affected individuals.

*Question 4: Please provide examples of ways in which States, the business enterprises, civil society and intergovernmental organisations have provided redress and remedies for individuals and communities in vulnerable situations who have suffered loss and damage due to the adverse effects of climate change.*

Involuntary displacement has been the traditional picture that comes to mind when one considers climate change loss and damage that fuels migration, and most related strategies have centered around acting retroactively to this dislocation, which is usually in response to sudden-onset climate hazards such as natural disasters. In the Global Compacts for Safe, Orderly and Regular Migration (GCM), adopted by the United Nations in December 2018, member countries noted the need for improved mitigation efforts and a more harmonized response to assist those affected by climate-related disasters but also emphasized that adaptation in the country of origin should be prioritized (Office of the United Nations High Commissioner for Human Rights [OHCHR], 2018:10). This narrative places a focus on the responsibility of the individual country to first reduce initial risk within its own borders and, should a climate hazard still occur that drives migration, to then attempt a disaster response itself before turning to the international community.

In an effort to get ahead of the most disastrous impacts of livelihood-destroying hazards, and to

reduce the frequency of situations in which communities are rendered immobile in the face of

said hazards, many in the international climate policy sphere have begun advocating for the use

of migration as an adaptation mechanism. In February 2021, United States President Joe Biden signed an executive order calling for programs to cope with the impacts of climate change on migration (The White House, 2021). The ensuing report produced by the White House notes that managed retreat, through which people are permanently and purposefully moved away from environmental risks, is typically made once an understood risk threshold is reached. The awareness of this adaptation strategy has also been recognized with its mention in the Sendai Framework for Disaster Risk Reduction, the Executive Committee of the Warsaw International Mechanism for Loss and Damage's Task Force on Displacement, and the Nansen Initiative’s Protection Agenda (The White House, 2021). Considering the larger climate change discourse, the acceptance of migration as a mechanism for adaptation may also result in stronger institutional frameworks to provide protection to climate migrants as well as encourage the removal of stigmas that associate migration with threats to security and sovereignty (Gibb & Ford, 2012). While the potential benefits of organized migration can be seen, gaps still exist in the practice of implementation, both in financing managed retreats and in the legalities surrounding displaced persons.

One example highlighting the delicate link between people and place is Isle de Jean Charles. The

island is located off the coast of Louisiana, a U.S. state known for its vulnerability to rising sea

levels, as it loses roughly a football field-sized portion of land to erosion every year and a half,

culminating in a sea-level rise between 1.41 and 2.72 feet by the year 2067 (Boyd, 2019). In

2016, the state was awarded a $48.3 million federal grant from the Department of Housing and

Urban Development (HUD) to resettle the approximately two dozen families who had been

living on the island (Carey, 2020). The new subdivision, called New Isle, is located roughly 40 miles north and is expected to receive the 37 of 42 eligible households who are participating in the relocation by mid-2022 (Setyawan, 2022). From a socio-cultural standpoint, however, this instance of managed retreat is complex: most of the island’s residents are members of the Biloxi-Chitimacha-Choctaw tribe, who were forced to migrate from the mainland under the Indian Removal Act of the 1830s as part of the Trail of Tears (Boyd, 2019). One study interviewed a majority of the island’s inhabitants, who recalled stories passed down of their ancestors signing an “X” on a government document and subsequently and unknowingly losing the rights to their lands (Simms et al., 2021). Although most residents accepted the reality of their deteriorating island and chose to move, the tribe’s chief, Chief Naquin, stated that he would not be part of the resettlement, citing attachment to the land and a decline in the voice that the state gave to the tribe as plans for the resettlement progressed (Boyd, 2019). In this example and many others, long-standing histories of colonialism, disenfranchisement, and discrimination complicate the social contract that exists between a government and the citizens that it is sworn to protect.

The Isle de Jean Charles resettlement also exemplifies the difficulties in compensating for the

intangible components of an individual’s life. Individual and community identities, in particular

those of indigenous groups, can be grounded in a place, as land can comfort a person with its

sense of familiarity, history, and a longstanding tradition of nature providing for its inhabitants

(Simms et al., 2021). This attachment is partially recognized in the Peninsula Principles, a

framework generated in 2013 by UN member states and based upon the UN Guiding Principles

on Internal Displacement. The Principles are not binding, as the member states have not ratified

and signed them, but they still serve to provide a set of norms and standards by which

governments can guide their policies (Hassine, 2019:97). Principle 11 notes the importance of

the ability of relocated individuals to access their traditional lands and waters (Displacement

Solutions, 2013:14). This follows with the growing call for recognition of non-economic loss and

damage, including negative social and health impacts that occur when an individual loses their sense of place or sees a break in community cohesion (Thomas & Benjamin, 2019). Exemplifying the strong ties that may exist between heritage and place, the planned resettlement

from Isle de Jean Charles highlights the socio-cultural complexities that must be considered with

instances of managed retreat and the level of disruption that occurs when one has to leave their home.

*Question 5: What international, regional and national policies and legal approaches are necessary to protect current and future generations and achieve intergenerational justice for particularly for individuals and communities, from the adverse impacts of climate change?*

On an international legal level, recognition is growing surrounding the current and continued

increase in forced displacement resulting from climate change and natural disasters. Despite this

reality, international refugee law affords no protection for these individuals, rendering the term

‘climate refugee’ a misnomer, with no legal significance (Behrman & Kent, 2018). The Oxford

Handbook of International Refugee Law acknowledges that although no refugee claim on the

basis of climate change-related hazards has succeeded, and international law does not explicitly

discuss cross-border movement as a result or in anticipation of climate risks, there are certain

frameworks for how states can respond. States afford protection to individuals when livelihood

impacts are linked to a breakdown of public order, when there is persecution by the government

or society, including any ensuing gender-based violence, or if there is a withholding of

humanitarian aid (Foster, McAdam & Costello, 2021). In this manner, climate change has the

potential to amplify the reasons that an individual may be afforded formal protection, but it is not

a driver of refugees on its own. Legal structures emphasize persecution, with exposure due to

direct action or inaction of the State, rather than instabilities as a result of a general state of

affairs (Foster, McAdam & Costello, 2021). This makes the definition of the persecutor a core

dilemma in affording legal refugee status to climate migrants. Timing is also a central issue—

climate change impacts tend to be of slower onset, and legal frameworks are not structured to

provide protection from future livelihood threats because beyond a certain time threshold these

risks are considered too speculative (Foster, McAdam & Costello, 2021).

In dealing with the speculative nature of long-term climate change, there is potential to apply the

precautionary principle, an approach that emphasizes preventative action and erring on the side

of caution when scientific evidence is lacking (Omuko, 2016). This may be used to assign

liability to governments or corporations, through their unwillingness to protect individuals from

future climate risks that may spur forced displacement (Omuko, 2016). The principle of nonrefoulement, which prevents a country from sending asylum seekers back to a place where they are at risk of persecution, may also be applicable to climate migrants. This principle has been used in the case of an individual from the small South Pacific island state of Kiribati, who was seeking refuge from the nation’s rising sea levels and contaminated water supply in New Zealand (McAdam, 2020). A complaint was lodged with the Human Rights Committee upon his

deportation from New Zealand, and it was ruled that while in his case his rights were not violated

and he did not face the risk of a likely deprivation of life upon his return to Kiribati, states have a

responsibility to consider the impacts of climate change and sea-level rise and whether or not

they are severe enough to trigger non-refoulement (McAdam, 2020). Thus, the international legal

community recognizes gaps and uncertainties through which laws may be adjusted and applied

to emerging problems, such as that climate change.

Ultimately, however, individual freedoms and rights and the State’s duty to uphold those rights

tend to be the focus of law and politics. From a legal standpoint, this results in a narrative

centered more around one actor in a judicial setting, rather than one that prioritizes the protection

of rights for an entire community. Instead of encouraging structural social and cultural changes,

the legal emphasis on the individual generates a self-help approach, with expectations of

personal preparedness and solo capacity to adapt when conditions become less-than-ideal

(Behrman & Kent, 2018). For indigenous groups and marginalized communities with lower

adaptive capabilities, this becomes problematic, often leaving them to fend for themselves.

Structurally, this individual focus can lead to a tendency to deflect blame, and as environmental

problems frequently transcend geopolitical boundaries this generates what is known as the “proof

problem” in requiring accountability (Behrman & Kent, 2018; Omuko, 2016). Large gaps remain

in legally recognizing climate change as a threat to individual livelihoods as well as in defining

the perpetrator of environmental damage, which prevents governments and international

institutions from affording proper protection to affected individuals and communities.

*Question 8: What actions are necessary to enhance actions by States, business enterprises, civil society and intergovernmental organisation to increase efforts to ensure that actions to adapt to the impacts of climate change contribute to reducing, and not exacerbating, the vulnerabilities of individuals and communities in vulnerable situations to the adverse impacts of climate change?*

To safeguard climate justice, existing structures to adapt to climate change and the displacement

it causes must consider the structural inequalities that exist in different communities and how

they interact with their environment. While the Warsaw International Mechanism on Loss and

Damage calls for transformational approaches to adapt to climate change, the nature of this

transformation is loosely defined and could range from the intensification of existing socioenvironmental relationships to a more metamorphic effort to address the root causes of climate vulnerability (Roberts & Pelling, 2019). In the Lake Chad Basin, for example, increased

droughts exacerbated vulnerabilities caused by structural inequalities and marginalization, poor

governance, ethnic tensions, and lack of social services (Daoust & Selby, 2022). When climate

change hazards are realized and displacement occurs, proper assessments of losses must be

made, as governments have not fully acknowledged the non-economic components of loss and

damage, such as cultural connections to place and the ensuing health impacts when that land is

lost (Boyd et al., 2021; Thomas & Benjamin, 2019). In the sphere of global climate policy, the

reconfiguring of the climate migration discourse as one of adaptation prioritizes individual

resilience over institutional responsibility (Bettini et al., 2016). This framing compounds issues

of climate justice when the larger structural causes of vulnerability, as well as the social and

cultural impacts on those subsequently displaced, are removed from the core of the narrative.

International policy discussions around climate change, particularly in the context of migration,

security, and loss and damage, have skirted around the need for larger structural changes. In a

way, this undervalues climate change as a threat on its own and allows for the deflection of direct

blame for the damages it has caused. Current structures to cope with the increasing threat of

climate change on livelihoods center on migration as a method of adaptation, yet these planned

migrations and loss and damage mechanisms aimed at compensating those most vulnerable to

climate change have yet to be fully realized, only come when the bulk of the damage has already

been inflicted, and tend to ignore the more nuanced socio-cultural losses that accompany

displacement. While the focus on migration as an adaptation mechanism shows promise in providing protection to individuals from the increasingly unavoidable climate change-caused threats, it risks neglecting the inherent rights of individuals and the State’s duty to uphold those rights and claims from the start, before hazards are aggravated and livelihoods are taken away. By omitting discussions around the political and economic foundations that magnify climate hazards, the way that the structures surrounding climate migration currently operate eschews the issue of climate justice and ultimately allows for the perpetuation of the underlying mechanisms that exploit the climate and heighten vulnerabilities for the most marginalized individuals.

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